

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENE ORTIZ,

Plaintiff,

v.

MARY MARKEY, et al.,

Defendants.

No. 2:21-cv-01221-KJM-CKD (PS)

ORDER VACATING HEARING AND
ORDER TO SHOW CAUSE

Plaintiff proceeds pro se in this action and asserts various claims against defendants Mary Markey, Wendy Torres, and the United States Department of Veterans Affairs. This case was originally filed in Sacramento County in small claims court. Defendants filed a notice of removal on July 12, 2021.


On July 14, 2021, defendants moved to dismiss the complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. Defendants' motion was set for a hearing on August 11, 2021. To date, plaintiff has not filed an opposition to the motion to dismiss, or a statement of non-opposition, and has not sought an extension of time to do so. Accordingly, the hearing set for August 11, 2021 will be vacated. If appropriate, the hearing will be reset at a later date. Plaintiff is ordered to show cause, in writing, why plaintiff's failure to oppose the motion to dismiss should not waive the right to oppose the motion and why this action should not, on that basis, be dismissed.

Local Rule 230(l) provides, in part: “Failure of the responding party to file an opposition or statement of non-opposition may be deemed a waiver of any opposition to the granting of the motion and my result in the imposition of sanctions.” In the Order Setting Status Conference dated July 12, 2021, a copy of which was served on plaintiff by defendants (see ECF Nos. 2, 3), plaintiff was cautioned that pursuant to Local Rule 230(c), an opposition to the granting of any motion must be filed fourteen days prior to the noticed hearing date. In that same order, plaintiff was cautioned “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if written opposition to the motion has not been timely filed by that party.” Plaintiff was notified that failure to comply with the Federal Rules of Civil Procedure, Local Rules of Practice, or orders of this court could result in dismissal of this action. Despite receiving these admonitions, plaintiff has not filed an opposition to the pending motion to dismiss or statement of non-opposition.

Based on the foregoing, IT IS ORDERED:

1. The August 11, 2021 hearing on defendants’ motion to dismiss is vacated, and, if appropriate, will be reset at a later date; and
2. Within 14 days from the date of this order, plaintiff shall show cause, in writing, why plaintiff’s failure to oppose defendants’ motion to dismiss should not waive the right to oppose the motion, and shall show cause, in writing, why this action should not be dismissed; if plaintiff does not wish to prosecute this case in this court, then plaintiff may file a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1), which will result in a recommendation that this action be dismissed.

Dated: August 4, 2021


 CAROLYN K. DELANEY
 UNITED STATES MAGISTRATE JUDGE

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